

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

UNITED STATES OF AMERICA

v.

RICHARD E. MOORE

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Criminal No. 5:21-CR-00023-EKD

UNITED STATES' MOTION TO CONTINUE JURY TRIAL

The United States, by counsel, respectfully moves this Court to continue the trial date currently scheduled for November 7, 2022, through November 10, 2022, and November 14, 2022, through November 18, 2022. In support thereof, the government states as follows:

1. On December 9, 2021, Moore was charged in a ten-count indictment with failure to collect/pay over tax. ECF No. 1. Following Moore's arraignment on or about December 16, 2021, trial in the matter was scheduled for February 18, 2022. ECF No. 16.

2. On January 7, 2022, prior counsel for Moore requested a continuance with no objection from the government. ECF.No.22.The trial was set for the current trial date of November 7, 7, 2022 through November 18, 2022.

3. Under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, a defendant charged in an indictment shall be tried beginning within seventy days of the filing date of the indictment or date the defendant appeared before a judicial officer of the court in which such charge is pending, whichever occurs last. 18 U.S.C. § 3161(c)(1). Defendant's arraignment on December 16, 2021, started the seventy-day Speedy Trial clock.

4. For purposes of the Speedy Trial Act, certain delays are excludable from the seventy-day period. These include "[a]ny period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request

of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(7)(A). In evaluating whether a continuance serves the ends of justice the court should consider “[w]hether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.” 18 U.S.C. § 3161(B)(i). The Court should also consider “[w]hether the failure to grant such a continuance . . . would unreasonably deny the defendant or the Government continuity of counsel or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” 18 U.S.C. § 3161(B)(iv).

5. The trial is currently set for nine days. The government believes the trial will last longer than the first four days. Undersigned counsel will be part of a seminar in Waco, Texas and unavailable from November 15, 2022, through November 18, 2022. As a result, counsel would be unavailable the second week of trial.

6. Neither the defendant nor the public will be significantly prejudiced by a continuance under the foregoing circumstances. Any such prejudice is outweighed by the grounds stated herein. Moore has been released on a \$15,000 unsecured bond ECF No. 12. Therefore, the defendant is unlikely to suffer substantial prejudice from a continuance.

7. This is the first continuance of trial requested by the government in this matter.

8. Due to the foregoing, a continuance in this matter serves “the ends of justice” and outweighs the interest of the public and defendant in a speedy trial. In addition, trial as scheduled would deny undersigned counsel the ability to participate in trial and for effective preparation of the case.

9. The government has conferred with Joshua Sabert Lowther, counsel for Moore, who has no objection to the additional extension and joins in our motion.

WHEREFORE, counsel for the United States respectfully requests a finding by this Court that the ends of justice served by the grant of a continuance outweigh the best interest of the public and the defendant in a speedy trial and further requests that the Court grant a continuance of trial in this case until the next practicable trial date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2022, I filed this United States' Motion to Continue Jury Trial with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Charlene R. Day
Assistant United States Attorney